

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling**

MARCUS CROCKER,

Petitioner,

v.

CIVIL ACTION No. 5:20-CV-142
Judge Bailey

BRYAN ANTONELLI,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

The above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge James P. Mazzone [Doc. 15]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Mazzone for submission of a proposed report and a recommendation ("R&R"). Magistrate Judge Mazzone filed his R&R on January 12, 2021, wherein he recommends that the respondent's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment [Doc. 12] be granted and the Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241 [Doc. 1] be denied and dismissed with prejudice.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Nor is this Court required to conduct a *de novo* review when the party makes

only “general and conclusory objections that do not direct the court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court’s Order. 28 U.S.C. § 636(b)(1); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). *Pro se* filings must be liberally construed and held to a less stringent standard than those drafted by licensed attorneys, however, courts are not required to create objections where none exist. *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1971).

Here, objections to Magistrate Judge Mazzone’s R&R were due within fourteen (14) days of receipt of the R&R, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b)(2) of the Federal Rules of Civil Procedure. Having filed no objections¹ within that time frame, petitioner has waived his right to both *de novo* review and to appeal this Court’s Order pursuant to 28 U.S.C. § 636(b)(1). Consequently, the R&R will be reviewed for clear error.

Having reviewed the R&R for clear error, it is the opinion of this Court that the Report and Recommendation [Doc. 15] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge’s report. The respondent’s Motion to Dismiss, or in the Alternative, Motion for Summary Judgment [Doc. 12] is hereby

¹This Court notes that the petitioner filed a letter addressed to the Clerk of Court stating that he is “currently in the process of exhausting [his] administrative grievances.” See [Doc. 16]. He further states that he has already filed a BP-8, BP-9, and BP-10 and is awaiting a response from the Regional Director. [Id.]. Even if this is the case, the petitioner still failed to exhaust his administrative grievances prior to filing his petition. Therefore, this letter/objection is moot.

GRANTED. Accordingly, this Court further **ORDERS** that petitioner's Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241 [Doc. 1] be **DENIED AND DISMISSED WITH PREJUDICE.** This Court further **DIRECTS** the Clerk to enter judgment in favor of the respondent and to **STRIKE** this case from the active docket of this Court.

It is so **ORDERED.**

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: February 8, 2021.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE